

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

KIERAN RAVI BHATTACHARYA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:19-CV-54-NKM-JCH
)	
)	
JAMES B. MURRAY, JR., et al.,)	
)	
Defendants.)	
)	

**MEMORANDUM IN SUPPORT OF DEFENDANTS’ MOTION TO SEAL EXHIBITS
TO PLAINTIFF’S MOTIONS TO QUASH AND TO FILE OPPOSITION TO UNDER
SEAL**

Defendants, by and through their undersigned counsel, state the following in support of their Motion to Seal the exhibits to Plaintiff’s Motions to Quash (“Exhibits”) (ECF Nos. 159-1 and 161-1) and to file their Opposition to Plaintiff’s Motions to Quash (“Opposition”) under seal pursuant to Local Rule 9 and 42 C.F.R. § 2.64(a):

I. RELEVANT BACKGROUND

On July 13, 2021 and July 15, 2021, Defendants issued subpoenas duces tecum (“Subpoenas”) to Metropolitan Psychiatric Services (“MPS”) and the University of Alabama System (“Alabama”) requesting medical records in connection with this matter. The Subpoenas contain patient identifying information.

Plaintiff moved to quash the Subpoenas. *See* ECF Nos. 158 and 161. Plaintiff filed unredacted copies of the Subpoenas as exhibits to his Motions to Quash. *See* ECF Nos. 158-1 and 161-1.

In their Opposition, Defendants ask the Court to order the production of the subpoenaed records for good cause pursuant to 42 C.F.R. § 2.64. The Opposition refers to the patient by name and discusses the contents of the medical records requested via the Subpoena.

The patient has not given written consent to disclosure of his or her information.

II. ARGUMENT

An application for disclosure of patient records under 42 C.F.R. § 2.64 must be filed under seal unless: (1) the patient has consented to the disclosure of his or her information in writing; or (2) the application uses a fictitious name and contains no patient identifying information. 42 C.F.R. § 2.64(a). The patient has not authorized the public release of his or her identifying information. The Exhibits contain patient identifying information *See* ECF Nos. 158-1 and 161-1. Accordingly, Defendants ask that the Court seal the Exhibits and Defendants' Opposition pursuant to 42 C.F.R. § 2.64.

The Fourth Circuit has established certain steps a district court must take before documents within a case may be filed under seal. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000). Such an order will not be valid unless the district court (A) provides notice to the public and gives the public an opportunity to object to the sealing, (B) considers less drastic alternatives, and (C) provides specific findings in support of the decision to seal and the rejection of alternatives. *Id.* All prerequisites are satisfied here.

A. Public Notice

Contemporaneously filed with this Motion, Defendants have filed a Notice of this Motion to be docketed by the Clerk, which will provide the public with an opportunity to bring objections, if any, to sealing the documents that are the subject of this Motion. It is sufficient to docket the

notice “reasonably in advance of deciding the issue.” *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984).

B. Less Drastic Alternatives

No procedure other than sealing the Exhibits and Defendant’s Opposition to Plaintiff’s Motions to Quash will avoid the public disclosure of patient identifying information in compliance with 42 C.F.R. § 2.64. The patient has not consented to the release of his or her information. Using a fictitious name is impractical because Plaintiff has already disclosed the patient’s name and date of birth by filing the Exhibits. Additionally, the arguments made in Defendants’ Opposition and application for disclosure require the identification of the patient by name and discussion of the content of the medical records. Thus, no other option for preserving the patient’s confidentiality besides sealing the proceedings is permissible under 42 C.F.R. § 2.64.

C. Specific Findings

The Exhibits and Defendant’s Opposition contain medical information protected from disclosure by 42 C.F.R. § 2.64(a). Protection of highly confidential information is appropriate and permissible in federal court. *See, e.g., Nixon v. Warner Commc’ns*, 435 U.S. 589, 598 (1978); *United States v. Doe*, 962 F.3d 139, 15-53 (4th Cir. 2020); *Hanwha Azdel v. C&D Zodiac*, No. 6:12-cv-00023, 2013 U.S. Dist. LEXIS 204728 (W.D. Va. Aug. 7, 2013) (granting motion to seal). Given that 42 C.F.R. § 2.64(a) requires the patient’s information to be protected from public view and the patient has not filed a written consent to the disclosure of his or her information the Court must seal the proceedings pursuant to federal regulation. Defendants, therefore, seek the sealing of the Exhibits and Defendant’s Opposition pursuant to Local Rule 9 and 42 C.F.R. § 2.64(a).

III. CONCLUSION

For these reasons, Defendants respectfully request that the Court grant their Motion to Seal and order the sealing of the Exhibits and Defendants' Opposition to Plaintiff's Motions to Quash.

Dated: August 17, 2021

Respectfully submitted,

/s/ Brittany A. McGill

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CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of August, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will deliver a notice of electronic filing to all counsel of record in this case.

/s/ Brittany A. McGill

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